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Attorneys for  
ALLEN HARROD

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALLEN HARROD

Defendant.

No. CR 03-384-WBS

MOTION TO WAIVE JURY  
AND TO BE TRIED BY JUDGE

Judge: William B. Shubb  
Date: April 19, 2006  
Time: 9:00 a.m.

The defendant, Allen Harrod, by and through his attorney, Bruce Locke, moves the Court to allow him to waive the trial by jury in this case and to allow him to be tried by the Court alone and, in support of this motion, would show the Court as follows:

1. This case involves charges of transporting minors in interstate commerce with the intent of having the minors be the victims of child molestation.
2. The molestation is alleged to have taken place against both a boy and 4 girls.
3. The molestation is alleged to have started as early as at age 6 and the molestation is alleged to involve oral, anal, and vaginal sex.
4. The molestation is alleged to involve both the mother and the father of the children involved and it is alleged to involve sexual acts of parents with their own children.
5. The molestation is alleged to have covered a period of about 11 years and

1 the government has provided the defense with notice that it intends to  
2 introduce evidence of prior bad acts that involve allegations of child  
3 molestation that goes back to the late 1970's and involves more than 15  
4 children of Mr. Harrod by his wife, Ila and by his common-law wife,  
5 Irene.

6 6. Counsel for Mr. Harrod has discussed this Motion with counsel for Juliette  
7 Labrecque and Michael Labrecque and those counsel have advised that  
8 their clients also wish to waive their right to a jury trial and to request trial  
9 by judge alone.

10 7. Counsel for Mr. Harrod has discussed this Motion with counsel for the  
11 government and counsel for the government has advised that the  
12 government will not agree to allow the defendants to waive the jury trial  
13 and to be tried by judge alone.

14 8. The government has three young women who are now in their late teens  
15 or early 20's who were victims of the molestation who are going to testify  
16 in this case. The government has the young man who is now in his early  
17 20's who is the victim in Counts 1, 2, and 3 who is going to testify in this  
18 case. The government also has journals and letters that were written by  
19 the defendants and the victims that corroborate the allegations contained  
20 in all of the Counts. The government also has the testimony of Irene Hunt  
21 who was Mr. Harrod's "common-law" wife and who is the mother of two  
22 of the victims and who participated in much of the abuse. There is not  
23 going to be any doubt that the molestations took place.

24 9. The indictment contains six counts that allege violations of 18 U.S.C. §  
25 2423(a), transporting a minor for purposes of criminal sexual activity. An  
26 element of that offense is that the defendant(s) did so with the intent that  
27 each victim engage in criminal sexual activity. Two of the counts allege  
28

1 that custody of a minor was transferred with the knowledge that as a  
2 consequence of the transfer of custody, the minor would be portrayed in  
3 a visual depiction engaging in sexually explicit conduct.

4 10. The only defense that has any real chance of success in this case is a  
5 defense based upon lack of knowledge or intent as to the purpose of  
6 transporting the children in interstate commerce or as to the purpose of  
7 the transfer of custody.

8 11. Undersigned counsel has conducted an informal poll of people who are  
9 not familiar with the case. Undersigned counsel explained the  
10 molestations that took place (oral, anal, and vaginal) and explained that the  
11 molestation was at the hands of the parents of the children, and that the  
12 molestation involved children as young as six and took place frequently  
13 over a period of ten years. Undersigned counsel then explained the  
14 elements of the offense and asked the person to assume that the  
15 government could not prove that the defendant transported the person for  
16 the purpose of illicit sexual activity. After giving that explanation,  
17 undersigned counsel asked the individual whether that person would  
18 acquit the defendant if he believed that the defendant had not sent the  
19 child across state lines or transferred custody for the purpose or with the  
20 knowledge that illicit sexual activity would take place. Undersigned  
21 counsel has not found any person, other than other defense counsel, who  
22 would say that he or she could ever acquit the defendants in those  
23 circumstances. (Most of the people who were asked these questions could  
24 not even understand how undersigned counsel could represent these  
25 defendants.)

26 12. We submit that it will be impossible for the jury to focus on the legitimate  
27 defense that a victim was not sent to Texas in interstate commerce with  
28

1 the intent that he be molested in Texas when there will be testimony that  
2 the abuse actually did occur. Moreover, the nature of the abuse and the  
3 actions of the parents of the victims in abusing their own children is so  
4 shocking that the defense has a reasonable fear that the jury will not be  
5 able to focus on the issues that are actually being contested and will find  
6 all of the defendants guilty solely because they participated in acts of  
7 abuse or solely because they associated with the other defendants.

8 The Supreme Court held in *Singer v. United States*, 380 U.S. 24, 37 (1965) that Rule  
9 23(a) of the Federal Rules of Criminal Procedure does not violate the Constitution in  
10 preventing the defendant from waiving a jury trial and without the acquiescence of the  
11 government. In *Singer*, the defendant claimed that a trial by judge alone would save  
12 time and the Court held that saving time was not a sufficient reason to require the  
13 government to acquiesce in the trial by judge alone. But the Supreme Court stated in  
14 dicta that there may be circumstances where the government would be violating the  
15 defendant's right to an impartial fact-finder where it withheld its consent. The Supreme  
16 Court stated as follows:

17 We need not determine in this case whether there might be some  
18 circumstances where a defendant's reasons for wanting to be tried by a  
19 judge alone are so compelling that the Government's insistence on trial by  
20 jury would result in the denial to a defendant of an impartial trial.  
21 Petitioner argues that there might arise situations where "passion,  
22 prejudice . . . public feeling" or some other factor may render impossible  
23 or unlikely an impartial trial by jury. However, since petitioner gave no  
24 reason for wanting to forgo jury trial other than to save time, this is not  
25 such a case, and petitioner does not claim that it is.

26 (*Singer* at 37-38.) We submit that the charges and the nature of the evidence in this  
27 case are so revolting that they will so shock the conscience of the jury that the jury will  
28 not be able to be impartial to Mr. Harrod and the other defendants as to those charges  
29 where there is a real issue as to whether the defendant intended that a victim engage in  
criminal sexual behavior or whether the defendant had knowledge that custody of a  
victim was being transferred so that a victim would be portrayed in a visual depiction

1 engaging in sexually explicit conduct.

2 Therefore, we respectfully submit that this Court should order the government  
3 to acquiesce in Mr. Harrod's and the other defendant's waiver of the jury and allow  
4 them to be tried by Judge alone.

5 \_\_\_\_\_ Respectfully submitted,

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7 DATED: April 14, 2006

8 /S/  
9 BRUCE LOCKE  
10 Attorney for Allen Harrod  
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